S.B. CIVIL WRIT PETITION NO.1179/2005

M/s. Joint Media vs. Smt. Amana Khatoon & anr.

Date : 1.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the petitioner

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Heard learned counsel for the petitioner.

The petitioner/defendant is aggrieved by the order dated 10.2.2005 by which the trial court closed the evidence of the petitioner.

According to learned counsel for the petitioner, the petitioner was sick at Jaipur and therefore, neither she could have appeared in the Court at Udaipur nor she could have filed the sick certificate on the day when the case was fixed for petitioner's evidence.

According to learned counsel for the petitioner, this Court in case of Bajrang Lal & Anr. vs. Saroj Kanwar reported in 2002(2) DNJ (Raj.) 655 held that the adjournment should have been granted to the petitioner on the ground of illness. After observing this, this Court allowed the revision petition and set aside the order of trial court.

According to learned counsel for the petitioner, in view the above fact and the fact that on the day

when the case was called, the petitioner was sick and she had valid ground for not attending the Court, therefore, the Court should have taken a liberal approach also. It is also submitted that the Court should not have been influenced by the time granted on earlier occasions and the Court should have looked into the ground which prevented the petitioner to appear.

I have considered the submissions of learned counsel for the petitioner.

It is clear from the facts mentioned in the impugned order that the court below did not believe the contentions of the petitioner that she was sick on the day when the case was called. This is a question of fact and the facts mentioned in the order dated 10.2.2005 are not in dispute that the medical certificate was not produced and nothing was mentioned in the application how the learned counsel came to know about the sickness of the petitioner.

In view of the above, when the sickness of the petitioner herself is not believed by the court below, then there arises no question of granting time on the ground of sickness. It is not a case where the court refused to grant time to the petitioner after holding that the petitioner was sick on that day.

Learned counsel for the petitioner submitted that the sickness certificate is on record as Annexure-5.

Admittedly, when the certificate was not before the court below and whether the petitioner had valid ground to absent herself from the Court on the relevant day, can be well examined by the appellate court in case the order impugned is challenged by the petitioner after the decision of the trial court.

In view of the above, this Court is not inclined to interfere in the impugned order in writ jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ petition having no merit, is hereby dismissed. However, the petitioner will be at liberty to challenge the impugned order in appeal in case any occasion arises for the petitioner to challenge the impugned order after the decision of the suit.

(PRAKASH TATIA), J.

S.Phophaliya